STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
ROBERT W. SWANSON, DIRECTOR

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COMMISSIONER

## BILL ANALYSIS

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| **BILL NUMBER:** | **Senate Bill 880 (House Substitute)** |
| **TOPIC:** | Annuity Sales to Consumers |
| **SPONSOR:** | Senator Gerald Van Woerkom |
| **CO-SPONSORS:** | Senators Bishop and Cropsey |
| **COMMITTEE:** | House Insurance |
| **Analysis Done:** | June 21, 2006 |

## POSITION

The Office of Financial and Insurance Services (OFIS) supports this legislation.

## PROBLEM/BACKGROUND

Annuities in general and variable annuities in particular have become popular investment vehicles for many individuals over the past few years. Unfortunately, some insurance companies and their appointed producers have taken advantage of the growing popularity to market and sell products that are not "suitable" for the individual purchasing the product based upon his or her financial situation. This is particularly troublesome when elderly or other vulnerable consumers are the target of this unscrupulous activity.

Variable annuities are investment products that are tied to the value of stocks purchased by the insurance company in the stock market. This particular type of long-term investment is usually not appropriate for elderly consumers. These individuals unwittingly tie up large amounts of cash for a long time in a product they may never live to reap the rewards. Seniors are particularly vulnerable to abuse from unscrupulous sales tactics since they may have saved and accumulated a large sum of money over the years and they may not fully understand the variable annuity product as it relates to their own circumstances. Protections for these and other vulnerable consumers should be put into law.

This legislation is based upon a model law developed at the National Association of Insurance Commissioners (NAIC). In developing model legislation, the NAIC holds hearings and balances the comments and concerns of many interested parties, including consumer groups, the industry, and the insurance regulators. This process results in very well-balanced legislative proposals.

## DESCRIPTION OF BILL

The proposed legislation adds Chapter 41A to the Insurance Code of 1956, 1956 PA 218. The overall purpose of the new chapter is to protect Michigan's consumers of all ages from unscrupulous insurance companies and producers that market annuities that may have no real value to those people who purchase them.

The chapter applies to a fixed or variable annuity that is solicited to an individual or group. It applies to any recommendations to purchase or exchange an annuity made to a consumer by a producer or insurer, with certain exceptions relating to employer sponsored plans, personal injury litigations and formal prepaid funeral contracts.

The producer or insurer must have reasonable grounds to recommend to a consumer the purchase or exchange of an annuity. The producer or insurer must make a recommendation that is suitable for the consumer based on information obtained from the consumer.

The insurer and the producer must establish a system to assure that the suitability provisions of the chapter are being met where the purchase of fixed or variable annuities is concerned. They may hire a third party to administer such a system, but must certify that such a system exists and is in compliance with the chapter. Records concerning consumer transactions for fixed or variable annuities must be kept for six years after the transaction is completed.

An insurer that complies with the National Association of Securities Dealers Rules pertaining to suitability is assumed to satisfy the requirements of the chapter. Any changes to those rules are applicable if they are at least as stringent as the current rule.

## SUMMARY OF ARGUMENTS

### Pro

While the Commissioner of OFIS today, both as the insurance regulator and in some cases as the securities regulator, has the authority to take action against producers or insurers that violate the law, the burden of proof in these instances is often a barrier to effective enforcement. The burden is on the purchaser to prove that the producer or insurer acted improperly or made misrepresentations in the sales situation and that the product was not in their best interests – the word of a savvy professional against the word of the consumer. This is especially difficult if the consumer is elderly or vulnerable in some other manner.

This new chapter would provide vital tools for the protection of consumers who find themselves victims of insurers and producers who do not have the best interest of the consumer at heart. Under the language of the bill, the burden would be on the insurer or producer to determine the suitability of the product before the sale occurred. If that provision is violated, the Commissioner can impose any of the penalties and fines available to the Commissioner under the Insurance Code.

**Con**

None known.

## FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services: None

Budgetary:
Revenue:
Comments:

(b) To the Department of Labor and Economic Growth: None

Budgetary:
Revenue:
Comments:

(c) To the State of Michigan: None

Budgetary:
Revenue:
Comments:

(d) To Local Governments within this State: None

Comments:

## OTHER STATE DEPARTMENTS

OFIS has had conversations with the Office of Service to the Aging (OSA) and the Department of Community Health (DCH) regarding this legislation. Their concern is that the protections in this legislation regarding disclosure, producer education, and age at which the protections kick in do not go far enough. The OSA and DCH are continuing their ongoing dialogue with various advocacy groups, such as the AARP, and may be contacting legislators to discuss possible amendments in that regard.

## ANY OTHER PERTINENT INFORMATION

Nearly half of the states have adopted the NAIC model regarding these senior protections, or have some other form of disclosure requirements through rules and regulations enacted in those states. At least half of these have followed the NAIC model closely.

The Senate amended the bill to include the definition of insurance producer and replace the phrase "general agent or independent agency" with that term for clarity and consistency within the Insurance Code. The bill passed the Senate on February 9, 2006, by a vote of 34 yeas and zero nays.

The bill as passed the Senate only provided the valuable protections of this proposal to senior consumers. OFIS notes that the American Council of Life Insurers (ACLI) has reversed their opposition and agreed to support a measure to extend consumer protections in the sales of annuities by expanding the suitability protections to consumers of all ages. Additionally, the NAIC very recently reviewed their existing model and voted to approve the expansion of these protections to consumers of all ages. The House Substitute makes this very important change.

## ADMINISTRATIVE RULES IMPACT

OFIS does have general rulemaking authority under the Insurance Code of 1956, 1956 PA 218.

Linda A. Watters
Commissioner

6-21-06

Date